

AMENDED IN SENATE JULY 3, 2003

AMENDED IN SENATE JUNE 18, 2003

AMENDED IN ASSEMBLY APRIL 8, 2003

AMENDED IN ASSEMBLY MARCH 25, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 572**

**Introduced by Assembly Member Yee**

February 18, 2003

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An act to amend Sections ~~98.7, 6310, 6310~~ and 6312 of, to add ~~Section~~ *Sections 6312.2, 6312.3, and 6312.5* to, and to repeal and add Section 6311 of, the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 572, as amended, Yee. Employment.

Under existing law, it is unlawful to discriminate against an employee for filing a complaint as to an unlawful employment practice, and the Labor Commissioner is required to investigate complaints of unlawful employment practices.

This bill would provide standards and establish time limits for the Labor Commissioner's investigation and decision.

Under existing law, if an employer does not comply with an order of the Labor Commissioner, the Labor Commissioner is required to bring an action in court for relief.

This bill would further require the Labor Commissioner to petition the court for appropriate temporary relief unless good cause exists for not doing so.

Under existing law, if an employee is unlawfully required and refuses to perform unsafe work, the employee is entitled to reinstatement and reimbursement for lost wages.

This bill would also allow the employee to recover a penalty, as well as reasonable attorney's fees and costs.

Under existing law, an employer who refuses to comply with an order of the Labor Commissioner is guilty of a misdemeanor.

This bill would make it a misdemeanor to intentionally refuse to rehire, promote, or restore an employee determined to be eligible therefor, thereby imposing a state-mandated local program.

Under existing law, any employee who believes that he or she has been discharged or otherwise discriminated against may file a complaint with the Labor Commissioner.

~~The bill would designate within the Division of Labor Standards Enforcement a unit or personnel designated solely to handle matters related to the protection of employees' rights to secure, safe, and healthful working conditions, and to assure effective and enforceable rights in the event of reprisal for involvement with occupational health and safety issues. The division would be required set forth the procedures for the filing, investigating, and determining complaints of occupational safety and health discrimination and would require the Labor Commissioner to establish additional procedures for processing complaints and require the Division of Labor Standards Enforcement~~ annually to file a report with the Legislature setting forth certain statistical information relating to employee safety and health and information concerning employee grievances.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. It is the intent of the Legislature that employees
- 2 in this state have effective and enforceable rights to secure safe and
- 3 healthful working conditions, and to this end, be protected against



1 reprisals for complaints about hazardous conditions and refusals  
2 to work in hazardous conditions. The following enumeration of  
3 rights and remedies shall be available and rigorously enforced.

4 ~~SEC. 2.—Section 98.7 of the Labor Code is amended to read:~~

5 ~~98.7.—(a) Any person who believes that he or she has been~~  
6 ~~discharged or otherwise discriminated against in violation of any~~  
7 ~~law under the jurisdiction of the Labor Commissioner may file a~~  
8 ~~complaint with the division within six months after the occurrence~~  
9 ~~of the violation. The six-month period may be extended for good~~  
10 ~~cause. The complaint shall be investigated by a discrimination~~  
11 ~~complaint investigator in accordance with this section. The Labor~~  
12 ~~Commissioner shall establish procedures for the investigation of~~  
13 ~~discrimination complaints. A summary of the procedures shall be~~  
14 ~~provided to each complainant and respondent at the time of initial~~  
15 ~~contact. The Labor Commissioner shall inform complainants~~  
16 ~~charging a violation of Section 6310 or 6311, at the time of initial~~  
17 ~~contact, of his or her right to file a separate, concurrent complaint~~  
18 ~~with the United States Department of Labor within 30 days after~~  
19 ~~the occurrence of the violation.~~

20 ~~(b) Each complaint of unlawful discharge or discrimination~~  
21 ~~shall be assigned to a discrimination complaint investigator who~~  
22 ~~shall prepare and submit a report to the Labor Commissioner based~~  
23 ~~on an investigation of the complaint. The Labor Commissioner~~  
24 ~~may designate the chief deputy or assistant Labor Commissioner~~  
25 ~~or the chief counsel to receive and review the reports.~~

26 ~~(1) The division shall commence an investigation within 10~~  
27 ~~days of the date that a complaint is received by the division. The~~  
28 ~~division shall provide written notice of the commencement of the~~  
29 ~~investigation to the complainant and respondent upon~~  
30 ~~commencing the investigation.~~

31 ~~(A) The written notice of commencement shall inform the~~  
32 ~~complainant and respondent of their rights and responsibilities and~~  
33 ~~of all procedures involved in resolving the complaint.~~

34 ~~(B) The written notice shall order that the respondent shall,~~  
35 ~~without awaiting a discovery request, provide to the complainant~~  
36 ~~and the division all of the following:~~

37 ~~(i) The name, and, if known, the address and telephone number~~  
38 ~~of each individual likely to have discoverable information that the~~  
39 ~~respondent may use to support its defenses, unless solely for~~  
40 ~~impeachment, identifying the subject of the information.~~

1     (ii) ~~A copy, or a description by category and location, of all~~  
2 ~~documents, data compilations, and tangible things that are in the~~  
3 ~~possession, custody, or control of the respondent that the~~  
4 ~~respondent may use to support its defenses, unless solely for~~  
5 ~~impeachment.~~

6     (iii) ~~The employee's personnel file.~~

7     (C) ~~If the complaint does not provide enough information to~~  
8 ~~commence an investigation, the division shall so notify the~~  
9 ~~complainant of that fact within 10 days, and shall instruct the~~  
10 ~~complainant regarding what additional specific information is~~  
11 ~~needed to commence the investigation.~~

12     (2) ~~The division shall issue subpoenas, upon showing of good~~  
13 ~~cause, for additional evidence in any form or to compel testimony~~  
14 ~~from a witness.~~

15     (3) ~~The investigation shall be conducted by an inspector,~~  
16 ~~investigator, or attorney designated by the division, who shall~~  
17 ~~obtain and consider, at a minimum, the following information:~~

18     (A) ~~Written statements and transcripts of oral statements~~  
19 ~~submitted by the complainant in response to questioning by the~~  
20 ~~division, which shall include all the elements of a prima facie case.~~

21     (B) ~~Written statements submitted by the respondent.~~

22     (C) ~~Written statements or transcripts of oral statements~~  
23 ~~submitted by the complainant in response to questioning by the~~  
24 ~~division, which shall include questioning the complainant~~  
25 ~~regarding evidence that might tend to rebut statements offered by~~  
26 ~~the respondent.~~

27     (D) ~~Documents subpoenaed from the respondent or any other~~  
28 ~~relevant source to support or rebut the evidence of the complainant~~  
29 ~~or the respondent.~~

30     (E) ~~Written statements or transcripts of oral statements given~~  
31 ~~by witnesses who have information concerning the alleged~~  
32 ~~violation. The identity of a witness shall remain confidential~~  
33 ~~unless the identification of the witness becomes necessary to~~  
34 ~~proceed with the investigation or to prosecute an action to enforce~~  
35 ~~a determination.~~

36     (4) ~~The person conducting the investigation shall, within 30~~  
37 ~~days of the date that a complaint for which an investigation was~~  
38 ~~commenced is received by the division, file a written investigation~~  
39 ~~report summarizing the findings of the investigation and all the~~  
40 ~~information obtained pursuant to subparagraphs (1) to (3);~~

1 inclusive. The investigation report submitted to the Labor  
2 Commissioner or designee shall include the statements and  
3 documents obtained in the investigation, and the findings of the  
4 investigator concerning whether a violation occurred.

5 (5) The Labor Commissioner may hold an investigative  
6 hearing whenever the Labor Commissioner determines, after  
7 review of the investigation report, that a hearing is necessary to  
8 fully establish the facts. In the hearing the investigation report  
9 shall be made a part of the record and the complainant and  
10 respondent shall have the opportunity to present further evidence.  
11 If a hearing is conducted, the complainant and the respondent have  
12 the right to be present, to present evidence, and to present and  
13 cross-examine witnesses. The complainant and the respondent  
14 have the right to cross-examine witnesses presented by the  
15 division. The division may issue, serve, and enforce subpoenas on  
16 behalf of the division, the complainant, or the respondent to  
17 compel the attendance of witnesses at the hearing.

18 (6) The division shall issue a decision including findings of fact  
19 and conclusions of law within 50 days of the date that a complaint  
20 for which an investigation was commenced is received by the  
21 division.

22 (e) If the Labor Commissioner determines a violation has  
23 occurred, he or she shall notify the complainant and respondent of  
24 the decision within 10 days of the time the decision is issued and  
25 direct the respondent to cease and desist from the violation and  
26 take any action deemed necessary to remedy the violation,  
27 including, but not limited to, where appropriate, rehiring or  
28 reinstatement, reimbursement of lost wages and interest thereon,  
29 payment of reasonable attorney's fees associated with any hearing  
30 held by the Labor Commissioner in investigating the complaint,  
31 the posting of notices to employees, and specific penalties set forth  
32 in subdivision (b) of Section 6310 for matters charging a violation  
33 of Section 6310 or 6311.

34 (1) If the respondent does not comply with the order within 10  
35 working days following notification of the Labor Commissioner's  
36 determination, the Labor Commissioner shall bring an action  
37 promptly against the respondent in a court of competent  
38 jurisdiction. The Labor Commissioner shall petition the court for  
39 appropriate temporary relief or restraining order unless he or she  
40 determines good cause exists for not doing so.

~~(2) If the Labor Commissioner fails to bring an action in court promptly, the complainant may bring an action against the Labor Commissioner in any appropriate court for a writ of mandate to compel the Labor Commissioner to bring an action in court against the respondent. If the complainant prevails in his or her action for a writ, the court shall award the complainant court costs and reasonable attorney's fees, notwithstanding any other law. Regardless of any delay in bringing an action in court, the Labor Commissioner shall not be divested of jurisdiction. In any action, the court may permit the claimant to intervene as a party plaintiff to the action and shall have jurisdiction, for cause shown, to restrain the violation and to order all appropriate relief. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, specific penalties set forth in subdivision (b) of Section 6310 for matters charging a violation of Section 6310 or 6311, and any other compensation or equitable relief as is appropriate under the circumstances of the case.~~

~~(d) (1) If the Labor Commissioner determines no violation has occurred, he or she shall notify the complainant and respondent of the decision within 10 days of the time the decision is issued and shall dismiss the complaint.~~

~~(2) The Labor Commissioner may direct the complainant to pay reasonable attorney's fees associated with any hearing held by the Labor Commissioner if the Labor Commissioner finds the complaint was frivolous, unreasonable, groundless, and was brought in bad faith.~~

~~(3) The complainant may, after notification of the Labor Commissioner's determination to dismiss a complaint, bring an action in an appropriate court, which shall have jurisdiction to determine whether a violation occurred, and if so, to restrain the violation and order all appropriate relief to remedy the violation. Appropriate relief includes, but is not limited to, rehiring or reinstatement of the complainant, reimbursement of lost wages and interest thereon, specific penalties set forth in subdivision (b) of Section 6310 for matters charging a violation of Section 6310 or 6311, and other compensation or equitable relief as is appropriate under the circumstances of the case.~~

~~(4) When dismissing a complaint, the Labor Commissioner shall advise the complainant of his or her right to bring an action~~

1 in an appropriate court if he or she disagrees with the  
2 determination of the Labor Commissioner, and in the case of an  
3 alleged violation of Section 6310 or 6311, to file a complaint  
4 against the state program with the United States Department of  
5 Labor.

6 (5) The filing of a timely complaint against the state program  
7 with the United States Department of Labor shall stay the Labor  
8 Commissioner's dismissal of the division complaint until the  
9 United States Secretary of Labor makes a determination regarding  
10 the alleged violation. Within 15 days of receipt of that  
11 determination, the Labor Commissioner shall notify the parties  
12 whether he or she will reopen the complaint filed with the division  
13 or whether he or she will reaffirm the dismissal.

14 (e) The Labor Commissioner shall notify the complainant and  
15 respondent of his or her determination under subdivision (e) or  
16 paragraph (1) of subdivision (d), not later than 60 days after the  
17 filing of the complaint. Determinations by the Labor  
18 Commissioner under subdivision (e) or (d) may be appealed by the  
19 complainant or respondent to the Director of Industrial Relations  
20 within 10 days following notification of the Labor  
21 Commissioner's determination. The appeal shall set forth  
22 specifically and in full detail the grounds upon which the appealing  
23 party considers the Labor Commissioner's determination to be  
24 unjust or unlawful, and every issue to be considered by the  
25 director. The director may consider any issue relating to the initial  
26 determination and may modify, affirm, or reverse the Labor  
27 Commissioner's determination. The director's determination shall  
28 be the determination of the Labor Commissioner. The director  
29 shall notify the complainant and respondent of his or her  
30 determination within 10 days of receipt of the appeal.

31 (f) The rights and remedies provided by this section do not  
32 preclude an employee from pursuing any other rights and remedies  
33 under any other law.

34 ~~SEC. 3.—~~

35 *SEC. 2.* Section 6310 of the Labor Code is amended to read:

36 6310. (a) It is an unlawful employment practice for an  
37 employer to subject an employee to an adverse employment action  
38 because any of the following has occurred:

39 (1) The employee filed, caused to be filed, or made known his  
40 or her intention to file, any oral or written complaint to the



1 division, other governmental agencies having statutory  
2 responsibility for or assisting the division with reference to  
3 employee safety or health, his or her employer or any agent of his  
4 or her employer, or his or her representative.

5 (2) The employee instituted or caused to be instituted any  
6 proceeding under or relating to his or her rights or has testified or  
7 is about to testify in the proceeding or because of the exercise by  
8 the employee on behalf of himself, herself, or others of any rights  
9 afforded him or her pursuant to Division 5 (commencing with  
10 Section 6300).

11 (3) The employee participated in an occupational health and  
12 safety committee.

13 (4) The employee refused to perform unsafe work the  
14 performance of which ~~violates~~ *may violate* any provision of this  
15 code, including Section 6400, any occupational safety or health  
16 standard, or any safety order of the Division of Labor Standards  
17 Enforcement or the Occupational Safety and Health Standards  
18 Board, as further defined in subdivision (d).

19 (b) An employer who violates subdivision (a) is liable for the  
20 following:

21 (1) Twenty-five thousand dollars (\$25,000) or three times the  
22 value of the employee's lost benefits and wages, whichever is  
23 greater.

24 (2) Other pecuniary losses caused by the violation of  
25 subdivision (a).

26 (3) Reinstatement.

27 (4) Reasonable attorney's fees and costs.

28 (c) For purposes of this section, "adverse employment action"  
29 means a discharge, demotion, or suspension of an employee, or an  
30 action that threatens to discharge or in any other manner  
31 discriminates against an employee in a term or condition of  
32 employment.

33 (d) For purposes of this section, "refused to perform unsafe  
34 work" means a refusal to perform work under all of the following  
35 conditions:

36 (1) The employee complained in good faith about working  
37 conditions or practices which he or she reasonably believed to be  
38 unsafe or dangerous, created a real and apparent hazard, or was  
39 likely to cause death or serious physical harm to the employee, his  
40 or her fellow employees, or the employees of another employer.



(2) As soon as practicable, and immediately upon request, the employee reported his or her refusal and reasons to his or her immediate supervisor, foreperson, or any person in authority.

(3) The employee performed alternative work if requested by the employer.

~~SEC. 4.—~~

SEC. 3. Section 6311 of the Labor Code is repealed.

~~SEC. 5.—~~

SEC. 4. Section 6311 is added to the Labor Code, to read:

6311. Any employer who willfully refuses to rehire, promote, or otherwise restore an employee or former employee who had been determined to be eligible for rehiring or promotion or restoration by a grievance, procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

~~SEC. 6.—~~

SEC. 5. Section 6312 of the Labor Code is amended to read:

6312. Any employee who believes that he or she has been subjected to an adverse employment action by any person in violation of Section 6310 may file a complaint with the Labor Commissioner pursuant to Section ~~98.7~~ 6312.3.

SEC. 6. Section 6312.2 is added to the Labor Code, to read:

6312.2. Within 10 days of receipt of a complaint of an adverse employment action in violation of Section 6310, the Labor Commissioner or his or her designee shall preliminarily review it to determine whether to proceed with a full investigation. No later than June 30, 2004, and before implementing this subdivision for preliminary review, the Labor Commissioner shall develop evaluation criteria for the preliminary review. The criteria, as well as data and explanatory information regarding the matters to which these criteria are applied, shall be included in the first annual report to the Legislature pursuant to subdivision (b) of Section 6312.5. The data and explanatory information and any changes to the criteria shall also be included in subsequent annual reports to the Legislature pursuant to subdivision (b) of Section 6312.5. The decision of the Labor Commissioner whether or not to pursue a full investigation shall be without prejudice to the right of a complainant to pursue or obtain any other legal remedy he or she may have and is not intended to, and does not affect existing rights or remedies available to a complainant. This section shall remain in effect only until January 1, 2006, and as of that date is

1 *repealed, unless a later enacted statute enacted before January 1,*  
2 *2006, deletes or extends that date.*

3 *SEC. 7. Section 6312.3 is added to the Labor Code, to read:*

4 *6312.3. (a) Any person who believes that he or she has been*  
5 *discharged or otherwise discriminated against in violation of*  
6 *Section 6310 may file a complaint with the Labor Commissioner*  
7 *within six months after the occurrence of the violation. The*  
8 *six-month period may be extended by the Labor Commissioner for*  
9 *good cause.*

10 *(b) The Labor Commissioner or his or her designee shall assign*  
11 *the complaint to an occupational safety and health discrimination*  
12 *complaint investigator who shall prepare and submit a report to*  
13 *the Labor Commissioner based on an investigation of the*  
14 *complaint. The Labor Commissioner may designate the chief*  
15 *deputy, an assistant Labor Commissioner, or the chief counsel to*  
16 *receive and review the reports.*

17 *(c) No later than June 30, 2004, the Labor Commissioner shall*  
18 *establish procedures for the investigation of occupational safety*  
19 *and health discrimination complaints.*

20 *(d) Upon receipt of a complaint, the Division of Labor*  
21 *Standards Enforcement shall provide to each complainant:*

22 *(1) A summary of the procedures for processing the complaint.*

23 *(2) Notice that the complainant may file a separate, concurrent*  
24 *complaint with the United States Department of Labor within 30*  
25 *days after the occurrence of the violation.*

26 *(e) The procedures required in subdivision (c) shall, at a*  
27 *minimum, comply with the following:*

28 *(1) The Division of Labor Standards Enforcement shall provide*  
29 *the complainant and respondent written notice of whether or not*  
30 *it shall proceed with a full investigation and shall commence a full*  
31 *investigation within 20 days of the date of receipt of the complaint.*

32 *(A) If the Division of Labor Standards Enforcement does not*  
33 *believe the complainant provided sufficient enough information to*  
34 *process the complaint, it shall so notify the complainant of that fact*  
35 *as soon as possible, but not later than within 10 days of receipt of*  
36 *the complaint, and shall instruct the complainant regarding what*  
37 *additional specific information is needed to process the complaint.*

38 *(B) Upon commencement of a full investigation, a written*  
39 *notice shall inform the complainant and respondent of the nature*  
40 *of the complaint, their respective rights and responsibilities, and*

1 of all procedures involved in resolving the complaint, as set forth  
2 in Section 98.

3 (2) The Division of Labor Standards Enforcement shall issue  
4 subpoenas, upon showing of good cause, for additional evidence  
5 in any form or to compel testimony from a witness.

6 (3) The investigation shall be conducted by an inspector,  
7 investigator, or attorney designated by the Division of Labor  
8 Standards Enforcement, who shall obtain and consider, at a  
9 minimum, the following information:

10 (A) Written statements and transcripts of oral statements  
11 submitted by the complainant in response to questioning by the  
12 division, which shall include all the elements of a prima facie case.

13 (B) Written statements submitted by the respondent.

14 (C) Written statements or transcripts of oral statements  
15 submitted by the complainant in response to questioning by the  
16 division, which shall include questioning the complainant  
17 regarding evidence that might tend to rebut statements offered by  
18 the respondent.

19 (D) Documents subpoenaed from the respondent or any other  
20 relevant source to support or rebut the evidence of the complainant  
21 or the respondent.

22 (E) Written statements or transcripts of oral statements given  
23 by witnesses who have information concerning the alleged  
24 violation. The identity of a witness shall remain confidential unless  
25 the identification of the witness becomes necessary to proceed with  
26 the investigation or to prosecute an action to enforce a  
27 determination.

28 (4) The person conducting the investigation shall, within 20  
29 days of the date an investigation was commenced, submit to the  
30 Labor Commissioner or his or her designee, a written  
31 investigation report summarizing the findings of the investigation  
32 and all the information obtained pursuant to subparagraphs (1) to  
33 (3), inclusive. The investigation report shall include recommended  
34 findings of fact and conclusions of law, and shall also include  
35 attachments of all statements and documents obtained in the  
36 investigation.

37 (5) The Labor Commissioner shall, within 40 days of the date  
38 an investigation was commenced, issue a decision including  
39 findings of fact and conclusions of law within 40 days of the date  
40 an investigation was commenced.

1 (6) At any time before the Labor Commissioner or his or her  
2 designee issues his or her decision, he or she may hold an  
3 investigative hearing if, in his or her opinion, a hearing is  
4 necessary. All formal declarations, documentary evidence, and  
5 any investigation reports that may have been previously filed shall  
6 be made a part of the record. The complainant and respondent  
7 shall have the opportunity to review the record. The complainant  
8 and the respondent shall have the right to be present, to present  
9 further evidence, and to present and cross-examine any and all  
10 witnesses. The Division of Labor Standards Enforcement may  
11 issue, serve, and enforce subpoenas on behalf of itself, the  
12 complainant, or the respondent to compel the attendance of  
13 witnesses or to produce evidence at the hearing.

14 (f) The Labor Commissioner shall, within 50 days of the date  
15 an investigation was commenced, if a violation has occurred,  
16 notify the complainant and respondent and direct the respondent  
17 to cease and desist from the violation and take any action deemed  
18 necessary to remedy the violation, including, but not limited to,  
19 where appropriate, rehiring or reinstatement, reimbursement of  
20 lost wages and benefits and interest thereon, payment of  
21 reasonable attorney's fees associated with any hearing held by the  
22 Labor Commissioner in investigating the complaint, the posting of  
23 notices to employees, and specific penalties set forth in subdivision  
24 (b) of Section 6310 for matters charging a violation of Section  
25 6310.

26 (1) If the respondent does not comply with the order within 10  
27 days following notification of the Labor Commissioner's  
28 determination, the Labor Commissioner shall, within 60 days of  
29 the date an investigation was commenced, bring an action court  
30 against the respondent in a court of competent jurisdiction. The  
31 Labor Commissioner shall petition the court for appropriate  
32 temporary relief or restraining order unless he or she determines  
33 good cause exists for not doing so. If the Labor Commissioner  
34 prevails in this action, the court shall award reasonable attorney's  
35 fees, court costs, and investigative costs to the Labor  
36 Commissioner. Fees and costs that are awarded to the Labor  
37 Commissioner shall be retained by the Labor Commissioner and  
38 used to fund investigations of complaints filed pursuant to Section  
39 6310.

1 (2) *If the Labor Commissioner fails to bring an action in court*  
2 *within 60 days, the complainant may bring an action against the*  
3 *Labor Commissioner in any appropriate court for a writ of*  
4 *mandate to compel the Labor Commissioner to bring an action in*  
5 *court against the respondent. If the complainant prevails in his or*  
6 *her action for a writ, the court shall award the complainant court*  
7 *costs and reasonable attorney's fees, notwithstanding any other*  
8 *law.*

9 (3) *Regardless of any delay in bringing an action in court, the*  
10 *Labor Commissioner shall not be divested of jurisdiction.*

11 (4) *In any action, the court may permit the claimant to*  
12 *intervene as a party plaintiff to the action and shall have*  
13 *jurisdiction, for cause shown, to restrain the violation and to order*  
14 *all appropriate relief. Appropriate relief includes, but is not limited*  
15 *to, rehiring or reinstatement of the complainant, reimbursement of*  
16 *lost wages and benefits and interest thereon, specific penalties set*  
17 *forth in subdivision (b) of Section 6310 for matters charging a*  
18 *violation of Section 6310, and any other compensation or*  
19 *equitable relief as is appropriate under the circumstances of the*  
20 *case.*

21 (g) (1) *The Labor Commissioner shall, within 50 days of the*  
22 *date an investigation was commenced, and if no violation has*  
23 *occurred, dismiss the complaint.*

24 (2) *The Labor Commissioner may direct the complainant to*  
25 *pay reasonable attorney's fees associated with any hearing held by*  
26 *the Labor Commissioner if the Labor Commissioner finds the*  
27 *complaint was frivolous, unreasonable, groundless, and was*  
28 *brought in bad faith.*

29 (3) *The complainant may, after notification of the Labor*  
30 *Commissioner's determination to dismiss a complaint, bring an*  
31 *action in an appropriate court, which shall have jurisdiction to*  
32 *determine whether a violation occurred, and if so, to restrain the*  
33 *violation and order all appropriate relief to remedy the violation.*  
34 *Appropriate relief includes, but is not limited to, rehiring or*  
35 *reinstatement of the complainant, reimbursement of lost wages*  
36 *and benefits and interest thereon, specific penalties set forth in*  
37 *subdivision (b) of Section 6310 for matters charging a violation of*  
38 *Section 6310, and other compensation or equitable relief as is*  
39 *appropriate under the circumstances of the case.*

1 (4) When dismissing a complaint, the Labor Commissioner  
2 shall advise the complainant of his or her right to bring an action  
3 in an appropriate court if he or she disagrees with the  
4 determination of the Labor Commissioner, and in the case of an  
5 alleged violation of Section 6310, to file a complaint against the  
6 state program with the United States Department of Labor.

7 (5) The filing of a timely complaint against the state program  
8 with the United States Department of Labor shall stay the Labor  
9 Commissioner's dismissal of the division complaint until the  
10 United States Secretary of Labor makes a determination regarding  
11 the alleged violation. Within 15 days of receipt of that  
12 determination, the Labor Commissioner shall notify the parties  
13 whether he or she will reopen the complaint filed with the division  
14 or whether he or she will reaffirm the dismissal.

15 (i) The Labor Commissioner shall notify the complainant and  
16 respondent of his or her determination under subdivision (f) or  
17 paragraph (1) of subdivision (g), not later than 60 days after the  
18 filing of the complaint. Determinations by the Labor  
19 Commissioner under subdivision (f) or (g) may be appealed by the  
20 complainant or respondent to the Director of Industrial Relations  
21 within 10 days following notification of the Labor Commissioner's  
22 determination. The appeal shall set forth specifically and in full  
23 detail the grounds upon which the appealing party considers the  
24 Labor Commissioner's determination to be unjust or unlawful, and  
25 every issue to be considered by the director. The director may  
26 consider any issue relating to the initial determination and may  
27 modify, affirm, or reverse the Labor Commissioner's  
28 determination. The director's determination shall be the  
29 determination of the Labor Commissioner. The director shall  
30 notify the complainant and respondent of his or her determination  
31 within 10 days of receipt of the appeal.

32 (i) The rights and remedies provided by this section do not  
33 preclude an employee from pursuing any other rights and remedies  
34 under any other law. Nothing in this section is intended to, nor does  
35 it affect existing rights or remedies available to a complainant.

36 SEC. 7. Section 6312.5 is added to the Labor Code, to read:

37 6312.5. (a) In order to more effectively protect employees'  
38 rights to secure, safe, and healthful working conditions, and to  
39 assure effective and enforceable rights in the event of reprisal for  
40 involvement with occupational health and safety issues, there shall



1 be designated within the Division of Labor Standards  
2 Enforcement a unit or personnel designated solely to handle  
3 matters pursuant to Sections 6310 to 6312, inclusive.

4 (b) The Division of Labor Standards Enforcement shall file an  
5 annual report with the Legislature by December 1 of each year.  
6 This report shall provide an accounting of all matters involving  
7 Sections 6310 to 6312, inclusive, and shall report statistics so as  
8 to coincide with the Federal Occupational Safety and Health  
9 Administration fiscal year. The report shall include, but is not  
10 limited to, information regarding cases filed, investigated,  
11 dismissed, settled, heard, or appealed, the caseload of the Division  
12 of Labor Standards Enforcement, the timeliness of dispositions,  
13 and other information the Legislature may request in advance of  
14 the report. The Legislature shall direct the division as to any  
15 additional items to include in the report by October 1 of the year  
16 the report is due. The Legislature may hold a hearing on the report  
17 and obtain additional information after the report is submitted.

18 SEC. 8. It is the intent of the Legislature that any costs to the  
19 Division of Labor Standards Enforcement that may result from  
20 additional caseloads due to the enactment of this statute shall be  
21 paid from grants available under subdivision (g) of Section 672 of  
22 Title 29 of the United States Code.

23 SEC. 9. No reimbursement is required by this act pursuant to  
24 Section 6 of Article XIII B of the California Constitution because  
25 the only costs that may be incurred by a local agency or school  
26 district will be incurred because this act creates a new crime or  
27 infraction, eliminates a crime or infraction, or changes the penalty  
28 for a crime or infraction, within the meaning of Section 17556 of  
29 the Government Code, or changes the definition of a crime within  
30 the meaning of Section 6 of Article XIII B of the California  
31 Constitution.

